IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 14760 of 2005

Between:

Jannalagadda Radhakrishna Murthy S/o tirupathaiah
R/o Vemavaram, Vasttavari Mandal, Krishna district

..... PETITIONER

AND

1 The Registrar A.P., Co-operative Tribunal Vijayawada
2 The Dy Registrar of Co-op Societies O/o the Divisional Co-op Office, Vijayawada,
Krishna District
3 The Vemavaram Primary Agrl. Co-op Credit Society Ltd., Vemavaram, Vasttavari madnal, Krishna District

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring he order dt 6-7-2005 passed in M.A. No. 40 /2005 in O.A. No. 73 2005 by the 1st respondent as arbitrary illegal, and violtaive of principles of natural justice and consequently set a side the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.B.SOMASEKHAR

Counsel for the Respondent No.: GP FOR COOPERATION

The Court made the following :

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.14760 of 2005

ORAL ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Cooperation.

An appeal was preferred by the petitioner herein under Section 76 of the A.P. Cooperative Societies Act 1964 before the 1st respondent in O.A.No.73 of 2005. The petitioner also filed M.A.No.40 of 2005 seeking stay of the order of the 2nd respondent pending disposal of the appeal. In the affidavit, filed in support of M.A.No.40 of 2005, the petitioner stated that he had no capacity to deposit 50% of the amount involved in the surcharge order and he was ready to offer the properties worth about Rs.11,00,000/- which were attached by the respondent – authorities towards security of 50% of the surcharge amount.

The first respondent by order dated 6-7-2005, in M.A.No.40/05 in O.A.73/05, granted interim stay of all further proceedings in Rc.No.3161/2002-E dated 29-4-2005 of the 2nd respondent in so far as it related to the petitioner herein subject to deposit of 50% of the amount for which liability was fixed against the petitioner, on or before 19-7-2005 failing which the order lapses.

Learned counsel for the petitioner submits that other than the property which is subjected to attachment, the petitioner would furnish any other property as security, which would satisfy the requirement of Rule 11 of the A.P. Cooperative Tribunal (Procedure) Rules, 1994, which reads thus:

"11. Application for interim suspension order:

Where a party seeks the interim suspension of the impugned order, he shall file a separate application for the same. Every such application shall be supported by an affidavit in respect of applications for stay or suspension of the impugned orders passed by the departmental authorities, specially relating to misappropriation of amounts and sanction of benami loans, no interim orders in the nature of stay or suspension for a specified period shall be issued unless the applicant produces a cash deposit of not less than 50% of the amount involved in the impugned order or furnishes security of equal value as directed by the Tribunal"

It is clear from Rule 11 that the 1st respondent is vested with a discretion to either accept cash deposit of not less than 50% of the amount involved or security of equal value. Since the learned counsel for the petitioner submits that the petitioner, in view of the attachment of his properties, is not in position to produce cash deposit of 50% of the amount involved in the order of 2nd respondent, I consider it appropriate to direct the 1st respondent to consider the petitioner's request for furnishing security of a value equal to 50% of cash deposit, (which would also be sufficient compliance with Rule-11), and to pass appropriate orders thereon, within one month from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No order as to costs.

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14-7-2005

Note:

Issue operative portion of the order by wire

at party's cost.

B/o

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To;

1 The Registrar A.P., Co-operative Tribunal Vijayawada
2 The Dy Registrar of Co-op Societies O/o the Divisional Co-op Office, Vijayawada,
Krishna District
3 The Vemavaram Primary Agrl. Co-op Credit Society Ltd., Vemavaram, Vasttavari madnal, Krishna District

4. Two C.Cs. to the G.P. for Cooperation, High Court Buildings, Hyderabad (OUT)

5. Two C.D. copeis